Supreme Court, U.S.
FILED

06-860 DEC 14 2006

OFFICE OF THE CLERK

No. _____

In The
SUPREME COURT OF THE UNITED STATES

William C. Stearman, III,
Plaintiff-Appellant-Petitioner,

v.

JERRY E. SMITH, EMILIO M. GARZA, EDWARD CHARLES PRADO, KENNETH W. ROSENBERG, JUAN F. VASQUEZ, LYNNE GLASSER, DONNA B. READ, and UNITED STATES OF AMERICA,
Defendants-Appellees-Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

ORIGINAL PETITION FOR WRIT OF CERTIORARI

WILLIAM C. STEARMAN, III
504 SOUTH DENTON TAP ROAD
COPPELL, TEXAS [75019]

Questions Presented

Subject Matter Jurisdiction—Trial

1. Does Stearman's perfected tort lien have priority?

Discovery

2. Is Stearman entitled to his discovery?

Dismissal Policy—Appeal

3. How does the dismissal policy even apply?

   [Raised by the judgment on appeal.]

Parties

The parties to the court of appeals judgment sought to be reviewed are the following:

Case No. 06-10797

Appellant
William C. Stearman, III

Appellees
JERRY E. SMITH
EMILIO M. GARZA
EDWARD CHARLES PRADO
KENNETH W. ROSENBERG
JUAN F. VASQUEZ
LYNNE GLASSER
DONNA B. READ
MARY MCKINNEY (Supp. Complaint)
UNITED STATES OF AMERICA ("USOA")

CAROL A. BARTHEL
Attorney, Tax Division, DOJ

Citations to decisions below

None

Basis for Jurisdiction

(i) Date Judgment Entered
1 November A.D. 2006 [+90: 30 January A.D. 2007] (received in hand 5 Nov)

(ii) Rehearing, Extension None

(iii) Rule 12.5 Cross-appeal N/A

(iv) Statutes, Jurisdiction
Review by certiorari of decision by court of appeals, 28 U.S.C. §§ 1254(1), 2101(c).

(v) Regarding notice of statutory challenge, Rule 29.4(b)
None.

Non-Argument Calendar Preferred

Oral argument is not expected to aid in the resolution of these issues.

Statement of the Case

Trial Court Jurisdiction

28 U.S.C. § 1333(1) (damages), § 1331 (injunction).

When did Stearman's tort lien perfect?

Stearman's tort lien perfected long before USOA filed any Notice of Lien for its tax claim. (All dates are "A.D.")

2004 October 27. Stearman's first Notice of Lien filed with Tax Court.

2005 March 3. T.C. Memo 2005-39.

2005 May 31. Confirmation of no debtor's prison. *Arnold v. USOA*, 544 U.S. 1058 (May 31, 2005).

2005 November 29, 30. *Wallis*, Docket No. 8244-04 (U.S.T.C.; FOLEY denied both IRS motions for sanctions); *but see* No. 06-60256 (5th Cir.) (24 Oct) ($8,000 sanctions).

2006 January 13 (Friday). *Stearman* opinion (5th Cir.).

2006 February 13 (Monday). Stearman filed this suit, reasserting his lien.

2006 March 23. USOA filed Notice of (tax) Lien.

2006 March 29. The second panel assigned to the *Florance* case, T.C. Memos 2005-60, -61, No. 05-60552 (5th Cir.), held status quo in brief, unpublished opinion, citing neither *Tello I* nor *Stearman*.

2006 May 23. That same second panel issued the mandate, effectively declining VASQUEZ' proposal to alter the 29 March ruling.

2006 June 28. This case. Trial court ruled that it lacks jurisdiction, thus, effectively, that the tax lien outranks the tort lien, despite (A) the long-standing priority to the contrary, and (B) the facts that no defendant (1) submitted any verified facts responsive to Stearman's verified complaint or (2) responded to discovery.

2006 November 1. 5th Circuit dismissed for failure to pay the sanctions that are challenged by this very suit. *Cf. Boddie v. Connecticut*, 401 U.S. 371 (1971); *Milliken v. Meyer*, 311 U.S. 457 (1940); *Burns v. USOA*, 501 U.S. 129 (1991); *Hamdi v. Rumsfeld*, 542 U.S. 507 (2004).

Argument

Remedies Requested

Reverse and Remand.

Instructions should include entry of judgment on the pleadings for Stearman. FED. R. CIV. P. 37. Lindsay and Kaplan should not participate.

Discussion

Subject Matter Jurisdiction—Trial

1. Does Stearman's perfected tort lien have priority?

Traditional secured-creditor priority.

The following sequence is very long-standing:

- Court costs (*in custodia legis*)
- Seaman's wages
- Salvage, general average

- Tort claims (Stearman's position)
- Contract claims
- Liens per state law that are maritime in nature
- Government tax liens/claims.
- Non-maritime liens
- Non-lien maritime claims

2 BENEDICT ON ADMIRALTY § 51 (7th ed. 2000). *See also Bank One Louisiana N.A. v. M/V Mr. Dean*, 293 F.3d 830 (5th Cir. 2002).

This very list confirms the trial court's jurisdiction. *See also* 28 U.S.C. § 3002(15) (2000); *N. Ins. Co. of New York v. Chatham County, Georgia*, __ U.S. __, 126 S. Ct. 1689 (2006); *O'Shea v. Littleton*, 414 U.S. 488, 503 (1974); *Gravel* v. *USOA*, 408 U.S. 606, 627 (1972); *Harlow v. Fitzgerald*, 457 U.S. 800, 809-11, 813-19 (1982); *USOA v. Lanier*, 520 U.S. 259, 270-71 (1997).

Federal policy against secret liens.

USOA v. Estate of Romani, 523 U.S. 517 (1998) (state court judgment creditor's lien v. tax lien); *USOA v. McDermott*, 507 U.S. 448 (1993) (state court judgment creditor's lien v. tax lien); *USOA v. Estate of Donnelly*, 397 U.S. 286 (1970) (alleged "good faith purchaser for value" v. Notice of tax lien; Notice was adequate); *USOA v. Speers*, 382 U.S. 266 (1965) (bankruptcy trustee as "judgment creditor" v. unrecorded tax lien); *USOA v. Pioneer Am. Ins. Co.*, 372 U.S. 84 (1963) (federal policy against secret liens); *USOA v. Security Trust & Savings Bank*, 340 U.S. 47 (1950) (same); *Holt v. Crucible Steel Co. of Am.*, 224 U.S. 262 (1912) (same); *Thompson v. Fairbanks*, 196 U.S. 516 (1905) (no secret lien); *Fisher v. Shropshire*, 147 U.S. 133 (1893) (notice via suit, waiver may occur by agreement or inconsistent conduct, protection of vendor's lien); *Vance v. Vance*, 108 U.S. 514 (1883) ("The strong current of modern legislation and judicial opinion is against the enforcement of secret liens on property.").

These cases suggest that the sequence stated in Benedict for secured creditors has a couple of positions switched. The tax liens actually rank *higher* than the state "judgment creditor" liens. Key, the federal policy against secret liens has existed since at least 1883.

Discovery

2. Is Stearman entitled to his discovery?

Defendants must prove up their affirmative defenses. *Dixon v. USOA*, _ U.S. _, 126 S. Ct. 2437 (2006) ("*Dixon*") (citing *McKelvey v. United States*, 260 U.S. 353 (1922) and *United States v. Dickson*, 40 U.S. (15 Pet.) 141 (1841)); *Fontenot v. Upjohn Co.*, 780 F.2d 1190, 1194 (5th Cir. 1986). Stearman's verified petition was never rebutted. *O'Connor v. Board of Educ. of School Dist. 23*, 449 U.S. 1301 (1980) (unrebutted evidence stands). Mere assertions do not constitute rebuttal evidence. Stearman's sole discovery question focuses with scalpel sharpness on the affirmative defenses alleged. Where truthfully answered discovery fully and instantly negates the affirmative defense alleged, the affirmative defense fails (and by summary judgment standards). USOA went silent in response to this discovery. Silence doesn't prove the affirmative defense; silence negates it.

Discovery also established the FED. R. CIV. P. 11 problem Stearman pointed out. In sum, Stearman is entitled to judgment on the pleadings. FED. R. CIV. P. 37.

Dismissal Policy—Appeal

3. How does the dismissal policy even apply?

In the original Tax Court appeal, the appellate court sanctioned Stearman. Those sanctions are at the heart of this very suit. The trial court dismissed Stearman's unrebutted verified petition after USOA (A) refused to participate in discovery and (B) submitted no evidence for anything. Where the dismissal policy addresses frivolous appeals, it's very difficult to see how the dismissal policy even applies.

Synopsis

The trial court has jurisdiction. Stearman is entitled to discovery, thus, to judgment on the pleadings.

The 5th Circuit's dismissal conflicts with the substantive and procedural laws of the United States, relevant decisions of this Court, other courts of appeals, and even of their own, and so far departs from the accepted and usual course of judicial proceedings, encouraging the same by the trial court, as to call for the exercise of this Court's supervisory power.

Remedies Requested

Stearman requests

1. That this Court grant the petition, issue the writ of certiorari and take jurisdiction of this matter.
2. That the judgment on appeal be reversed and the case be remanded to the trial court for entry of judgment for Stearman regarding both damages and injunction.
3. That if remand to the appellate court is proper, say, per *Dixon*, that the dismissing panel not participate.
4. The opportunity to brief any additional issues the Court identifies for such.
5. The non-argument calendar.
6. That costs be taxed to USOA, and,
7. Any and all other relief at law, in equity or sui generis to which he may show himself justly entitled.

Respectfully submitted,

William C. Stearman, III
Without prejudice
Without the United States

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Rule 14.1(i)(i)—Appellate Opinion

2006 Nov 1

U.S. Court of Appeals
F I L E D
Nov – 1 2006
CHARLES R. FULBRUGE III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 06-10797

WILLIAM C. STEARMAN, III
Petitioner - Appellant

v.

JERRY E SMITH; EMILIO M GARZA; EDWARD CHARLES PRADO; KENNETH W ROSENBERG; JUAN F VASQUEZ; LYNNE GLASSER; DONNA B READ; UNITED STATES OF AMERICA
Defendants - Appellees

Appeal from the United States District Court for the Northern District of Texas, Dallas

---

Before DAVIS, BARKSDALE, and BENAVIDES, Circuit Judges.

PER CURIAM:

IT IS ORDERED that Appellees' motion to dismiss appeal is *granted* --

IT IS FURTHER ORDERED that Appellees' motion to hold briefing schedule in abeyance until the Court rules on Appellees' motion to dismiss is *denied as unnecessary* --

[initials of the three jurists]

Rule 14.1(i)(ii)—Additional Orders

In the Trial Court

2006 Jun 28—Judgment

N.B. Very few of these documents have file-stamps. Where a file-stamp exists, it's included at the top.

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

WILLIAM C. STEARMAN, III,	§	
Plaintiff,	§	
v.	§	**Civil Action No.**
	§	**3:06-CV-0273-L**
JERRY E. SMITH, ET AL.,	§	
Defendants.	§	

JUDGMENT

This judgment is issued pursuant to the court's order dated June 28, 2006. It is therefore ORDERED, ADJUDGED, and DECREED that this action is hereby **dismissed without prejudice** for lack of subject matter jurisdiction as to Defendant United States of America and **dismissed with prejudice** as to all remaining Defendants; that Plaintiff William C. Stearman, III ("Plaintiff") take nothing from Defendants Juan F. Vasquez, Jerry E. Smith, Emilio M. Garza, Edward Charles Prado, Donna B. Read, Kenneth W. Rosenberg and Lynne Glasser; that all relief requested by Plaintiff as to the individual Defendants is **denied**; that all relief not expressly granted herein is **denied**; and that all allowable and reasonable costs are taxed against Plaintiff.

Signed this 28th day of June, 2006.

/s/ Sam A. Lindsay
Sam A. Lindsay
United States District Judge

Judgment - Solo Page

USCA5 482

2006 Jun 28—Opinion

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

WILLIAM C. STEARMAN, III,	§	
Plaintiff,	§	
v.	§	**Civil Action No.**
	§	**3:06-CV-0273-L**
JERRY E. SMITH, ET AL.,	§	
Defendants.	§	

ORDER

Pursuant to a standing order of reference, this case was referred to United States Magistrate Judge Jeff Kaplan for pretrial management. On June 12, 2006, the Findings and Recommendation of the magistrate judge were filed, in which he recommended that the court grant Defendants' Motion to Dismiss or Alternatively for Summary Judgment [Doc. #21] and deny Plaintiffs First Motion to Strike [Doc. # 29]. Plaintiff William C. Stearman, III filed objections on June 26, 2006.

Plaintiff William C. Stearman, III ("Plaintiff"), who had unsuccessfully sought to challenge the determination of his federal tax liability and associated penalties for the calendar years 1999 through 2002, filed this civil action after the United States Court of Appeals for the Fifth

Circuit affirmed a decision of the United States Tax Court adverse to him. In addition to affirming the tax court's determination that Plaintiff had more than $350,000 in tax deficiencies and associated penalties, the Fifth Circuit affirmed a $25,000 sanction imposed by the tax court, and imposed a further sanction against Plaintiff in the amount of $12,000 for filing a frivolous appeal. Plaintiff has since filed a petition for writ of certiorari with the United States Supreme Court [1] in that case.

In this lawsuit, Plaintiff has sued the tax court judge, court clerk, the appellate judges who decided his appeal, the United States's attorneys, and the United States of America. On April 14, [USCA5 479] [1 2] 2006, Defendants filed a Motion to Dismiss or Alternatively for Summary Judgment. Magistrate Judge Jeff Kaplan, in his Findings and Recommendation, agreed with Defendants and recommended that the court grant Defendants' Motion to Dismiss or Alternatively for Summary Judgment, and accordingly dismiss this case with prejudice for lack of subject matter jurisdiction as to Defendant United States of America and dismiss this case with prejudice on immunity grounds as to all remaining Defendants. *See* Findings & Recommendation at 7-10, 12. He also recommended that Plaintiff's request for injunctive relief be dismissed, as it was barred by collateral estoppel. *Id.* at 11. On June 2, 2006, Plaintiff filed a First Motion to Strike, arguing that the court should strike Defendants' motion for violations of Fed. R. Civ. P. 11. The magistrate judge, in his Findings and Recommendation, recommended that the motion to strike be denied, as Plaintiff failed to make any showing that the legal briefs filed by Defendants violated Rule 11. *See id.* at 6-7.

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[1] [N.B. It's curious that the obvious is so difficult. Actually, that petition for cert was, like this petition for cert is, filed with the Supreme Court of the United States. *See* 28 U.S.C. § 1. *WCS*]

On June 26, 2006, Plaintiff filed a fifty-three (53) page document titled "Stearman's Objections to the Magistrate's Findings and Recommendations." The court has reviewed the objections. While Plaintiff uses strong language to denigrate Magistrate Judge Jeff Kaplan and the judicial officers from the United States Tax Court and the Fifth Circuit, the court determines that responding in kind serves no purpose other than the perpetuation of acrimony. Suffice it to say that Plaintiff lacks a basic appreciation and understanding of the laws of immunity and collateral estoppel that are dispositive of his alleged claims. Plaintiff has asserted no legally viable objections. He, regrettably, uses invective and rehashes his previously asserted arguments which the magistrate judge correctly rejected in his Findings and Recommendation.

Having reviewed the pleadings, file and record in this case, the findings and conclusions of the magistrate judge, and Plaintiff's objections thereto, the court determines that the findings and [USCA5 480] [⊥ 3] conclusions are correct. The magistrate judge's findings and conclusions are accepted as those of the court, and Plaintiff's objections are **overruled**. Accordingly, Defendants' Motion to Dismiss or Alternatively for Summary Judgment is hereby **granted**. This action is hereby **dismissed without prejudice** for lack of subject matter jurisdiction as to Defendant United States of America * and **dismissed with prejudice** as to all remaining Defendants. Further, Plaintiffs Motion to Strike is hereby **denied**. Final judgment will issue by separate order.

It is so ordered this 28th day of June, 2006.

/s/ Sam A. Lindsay
Sam A. Lindsay
United States District Judge

* The magistrate judge recommended that dismissal as to the United States be with prejudice. A dismissal based on want of subject matter jurisdiction, however, is without prejudice. *See Cinel v. Connick*, 15 F.3d 1338, 1341 (5th Cir.), *cert. denied*, 513 U.S. 868 (1994); *Voisin's Oyster House, Inc. v. Guidry*, 799 F.2d 183, 188-89 (5th Cir. 1986).

2006 Feb 15—Order of Reference

U.S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FILED
FEB 15 2006
CLERK, U.S. DISTRICT COURT
By _____
Deputy

Ctj + mag ORIGINAL

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

WILLIAM C. STEARMAN, III,	§	
Plaintiff,	§	
v.	§	Civil Action No.
	§	3:06-CV-0273-L
JERRY E. SMITH, et al.,	§	
Defendants.	§	

ORDER OF REFERENCE

Pursuant to 28 U.S.C. § 636(b), **Stearman's Motion for Non-Public Docket or Seal** and **Stearman's Motion for Three-Judge Panel**, both filed **February 13, 2006**, are hereby referred to United States Magistrate

Judge **Jeff Kaplan**, for hearing, if necessary, and for determination. This order of reference also prospectively refers all procedural motions that are related to the referred motions to the United States Magistrate Judge for resolution. All future filings regarding the referred – motions shall be addressed "To the Honorable United States Magistrate Judge" – not to the district judge or court – and shall be accompanied by a transmittal letter addressed to the magistrate judge so that filings will reach him without delay.

It is so ordered this *15th* day of February, 2006.

/s/ Sam A. Lindsay
Sam A. Lindsay
United States District Judge

Order of Reference - Solo Page

USCA5 158

2006 Feb 17—Order denying motions for Non-public Docket or Seal and for Three-Judge Panel

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

WILLIAM C. STEARMAN III	§	
Plaintiffs,	§	
VS.	§	NO. 3-06-CV-0273-L
	§	
JERRY E. SMITH, ET AL.	§	
Defendants.	§	

ORDER

Plaintiff William C. Stearman III, appearing *pro se*, has filed a motion for non-public docket or seal [Doc. #2] and a motion to have this case assigned to a three-judge panel [Doc. #3]. Plaintiff fails to cite any statutory or other legal authority to support his request that "this case move forward with a Non-Public Docket or else under Seal." Nor is there any statutory basis for having the case heard by a three-judge court. The statute cited by plaintiff, 28 U.S.C. § 2284, provides that "[a] district court of three judges shall be convened when otherwise required by Act of Congress, or when an action is filed challenging the constitutionality of the apportionment of congressional districts or the apportionment of any statewide legislative body." This case does not meet either requirement.

Accordingly, plaintiff's motion for non-public docket or seal and motion for a three-judge panel are denied.

SO ORDERED.

DATED: February 17, 2006.

/s/ Jeff Kaplan
JEFF KAPLAN
UNITED STATES MAGISTRATE JUDGE

USCA5 159

2006 Feb 17—Order denying deposit of federal wampum into court registry

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

WILLIAM C. STEARMAN III	§	
Plaintiffs,	§	
VS.	§	NO. 3-06-CV-0273-L
	§	
JERRY E. SMITH, ET AL.	§	
Defendants.	§	

ORDER

Plaintiff William C. Stearman III, appearing *pro se*, has submitted an envelope to the court *in camera*. The envelope contains six beads which, according to plaintiff, represents "federal wampum" in the amount of $12,000 and is tendered as conditional payment if defendants can justify their "retaliatory and extortionate" claims. Plaintiffs request to deposit these beads into the registry of the court is denied.

SO ORDERED.

DATED: February 17, 2006.

/s/ Jeff Kaplan
JEFF KAPLAN
UNITED STATES MAGISTRATE JUDGE

USCA5 160

2006 Apr 19—Standing Order of Reference

U.S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FILED
APR 19 2006
CLERK, U.S. DISTRICT COURT
By _____ */s/ dg*
Deputy

Ctj + mag ORIGINAL

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

WILLIAM C. STEARMAN, III,	§	
Plaintiff,	§	
v.	§	Civil Action No.
	§	3:06-CV-0273-L
JERRY E. SMITH, et al.,	§	
Defendants.	§	

STANDING ORDER OF REFERENCE

This case is hereby referred to United States Magistrate Judge **Jeff Kaplan** for pretrial management. All nondispositive motions are prospectively referred to the magistrate judge for determination. All dispositive motions are prospectively referred to the magistrate judge for findings of fact and recommendations. All other pretrial matters, including scheduling and alternative dispute resolution, are referred to the magistrate judge for appropriate action consistent with applicable law.

It is so ordered this *18th* day of April, 2006.

/s/ Sam A. Lindsay
Sam A. Lindsay
United States District Judge

Order of Reference - Solo Page

USCA5 192

2006 Apr 19—Order setting response time for USOA's motion to dismiss or for summary judgment

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

WILLIAM C. STEARMAN III	§	
Plaintiff,	§	
VS.	§	NO. 3-06-CV-0273-L
	§	
JERRY E. SMITH, ET AL.	§	
Defendants.	§	

ORDER

Defendants, by and through the United States Attorney for the Northern District of Texas, have filed a motion to dismiss or, alternatively, for summary judgment in this *pro se* civil action. As grounds for their motion, Juan F. Vasquez, a United States Tax Court judge, and Jerry E. Smith, Emilio M. Garza, and Edward Charles Prado, judges of the United States Court of Appeals for the Fifth Circuit, rely on the defense of judicial immunity. Donna Read and Kenneth Rosenberg, attorneys employed by agencies of the federal government, seek dismissal on the grounds of prosecutorial immunity. Lynne Glasser, a deputy clerk of the United States Tax Court, asserts the defense of qualified immunity. The United States of America seeks dismissal on the grounds of sovereign immunity.

Because the court intends to rely on matters outside the pleadings in ruling on defendants' motion, it treats the motion as one for summary judgment. *See* Fed. R. Civ. P. 12(b). Plaintiff shall file a written response to the motion by **May 15, 2006.** The response must be accompanied by a brief not to exceed 25 pages in length.

See LCivR 56.5(b) (as modified). Any affidavits, depositions, written discovery materials, or other, summary judgment evidence must be included in a separate appendix. The appendix shall be numbered sequentially from the first page through the [USCA5 193] [⊥ 2] last, and include an index of all documents contained therein. An envelope that contains a nondocumentary or oversized exhibit must be numbered as if it were a single page. *See* LCivR56.6(b). Defendants may file a reply brief, but no additional evidence, by **May 30, 2006**. The reply shall not exceed 10 pages in length. *See* LCivR56.5(b) (as modified). No supplemental pleadings, briefs, or summary judgment evidence will be allowed without leave of court. *See* LCivR56.7.

The court will rule on the motion without hearing oral argument based on the written submissions of the parties. *See* LCivR 7.1(g) ("Unless otherwise directed by the presiding judge, oral argument on a motion will not be held.").

SO ORDERED.

DATED: April 19. 2006.

/s/ Jeff Kaplan
JEFF KAPLAN
UNITED STATES MAGISTRATE JUDGE

USCA5 194

2006 Jun 7—Order dispensing with need for USOA to respond to Stearman's motions to strike or for summary judgment

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

WILLIAM C. STEARMAN III	§	
Plaintiff,	§	
VS.	§	NO. 3-06-CV-0273-L
	§	
JERRY E. SMITH, ET AL.	§	
Defendants.	§	

ORDER

Plaintiff William C. Stearman III, appearing *pro se*, has filed a motion to strike defendants' motion to dismiss or, alternatively, for summary judgment. [Doc. #29]. The court will consider plaintiff's motion in conjunction with defendants' motion to dismiss or for summary judgment. A written response to plaintiff's motion is neither required nor desired.

SO ORDERED.

DATED: June 7, 2006.

/s/ Jeff Kaplan
JEFF KAPLAN
UNITED STATES MAGISTRATE JUDGE

USCA5 267

2006 Jun 7—Order denying Stearman's motion to compel or for sanctions

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

WILLIAM C. STEARMAN III Plaintiff,	§	
VS.	§	NO. 3-06-CV-0273-L
JERRY E. SMITH, ET AL. Defendants.	§	

ORDER

Plaintiff William C. Stearman III, appearing *pro se*, has filed a motion to compel discovery or for sanctions. At issue is the failure of defendants to answer a single interrogatory seeking their addresses, social security numbers, and driver's license numbers. [2] On April 14, 2006, before plaintiff served this interrogatory on opposing counsel, defendants filed a motion to dismiss or, alternatively, for summary judgment. The information requested by plaintiff is not necessary to the disposition of that motion. [3] Accordingly, plaintiffs motion to compel or for sanctions [Doc. #26] is denied without prejudice. Plaintiff may reurge his motion, if appropriate, after the court rules on defendants' motion to dismiss or, alternatively, for summary judgment.

SO ORDERED.

DATED: June 7, 2006.

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[2] [N.B. For the whole Interrogatory, see [26]. *WCS*]

[3] [N.B. *But see* n.2. *WCS*]

/s/ Jeff Kaplan
JEFF KAPLAN
UNITED STATES MAGISTRATE JUDGE

USCA5 268

2006 Jun 7—Order denying Stearman's motion for default judgment

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

WILLIAM C. STEARMAN III	§	
Plaintiff,	§	
VS.	§	NO. 3-06-CV-0273-L
	§	
JERRY E. SMITH, ET AL.	§	
Defendants.	§	

ORDER

Plaintiff William C. Stearman III, appearing *pro se*, has filed a motion for entry of default and for default judgment due to the failure of defendants to timely file an answer in this case. Although Fed. R. Civ. P. 12(a) ordinarily requires a defendant to file an answer within 20 days after being served with the summons and complaint, [4] service of a Rule 12 motion postpones the answer date until 10 days after the court rules on such a motion. *See* Fed. R. Civ. P. 12(a)(4)(A). Here, defendants timely filed a Rule 12(b)(6) motion to dismiss or, alternatively, for summary judgment. Unless and until the court denies that motion, defendants are not required to file an answer.

[4] [N.B. *But cf.* [9] to [20]. *WCS*]

Accordingly, plaintiffs motion for entry of default and for default judgment [Doc. #27] is denied.

SO ORDERED.

DATED: June 7, 2006.

/s/ Jeff Kaplan
JEFF KAPLAN
UNITED STATES MAGISTRATE JUDGE

USCA5 269

2006 Jun 7—Order denying Stearman's motion to reconsider

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

WILLIAM C. STEARMAN III	§	
Plaintiff,	§	
VS.	§	NO. 3-06-CV-0273-L
	§	
JERRY E. SMITH, ET AL.	§	
Defendants.	§	

ORDER

Plaintiff William C. Stearman III, appearing *pro se*, has filed a motion to reconsider the February 17, 2006 order denying his motion to place this case on a "non-public docket" or to move forward under seal. There is no just reason for sealing the pleadings or the record in this case.

Accordingly, his motion for reconsideration [Doc. #28] is denied.

SO ORDERED.

DATED: June 7, 2006.

/s/ Jeff Kaplan
JEFF KAPLAN
UNITED STATES MAGISTRATE JUDGE

USCA5 270

2006 Jun 12—*Sua sponte* motions and orders to strike Supplemental Complaint and Summons

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

WILLIAM C. STEARMAN III Plaintiff,	§ §	
VS.	§	NO. 3-06-CV-0273-L
JERRY E. SMITH, ET AL. Defendants.	§ §	

ORDER

In a supplemental complaint filed on June 8, 2006, plaintiff attempts to join Mary McKinney, an IRS revenue agent, as an additional party in this case. Plaintiff has neither sought nor obtained leave of court to file this pleading as required by Fed. R. Civ. P. 15(d). [5] Even had

[5] [n.1 in the original.] Rule 15(d) provides, in relevant part:

> Upon motion of a party the court may, upon reasonable notice and upon such terms as are just, permit the party to serve a supplemental pleading setting forth transactions or occurrences or events which have happened since the date of the pleading sought to be supplemented.

Fed. R. Civ. P. 15(d).

plaintiff sought leave to file a supplemental complaint, his motion would be denied as futile. As a federal employee sued in her individual capacity, McKinney is entitled to qualified immunity for discretionary acts performed in good faith while acting within the scope of her authority unless her conduct violates a "clearly established ... constitutional right[] (sic.) of which a reasonable person would have known." *Harlow v. Fitzgerald*, 457 U.S. 800, 818, 102 S.Ct. 2727, 2738, 73 L.Ed.2d 396 (1982). Plaintiff does not allege any facts which, if proved, show that McKinney violated a clearly established constitutional right or acted in a way which a reasonable person should have known was unlawful. [USCA5 335] [⊥ 2] *See Fry v. Melaragno*, 939 F.2d 832, 839 (9th Cir. 1991) (dismissing claim against IRS agent on grounds of qualified immunity).

For these reasons, plaintiff's supplemental complaint [Doc. #34] is stricken from the record of this case. The district clerk is directed to note on the docket that this document has been unfiled. The summonses issued to the United States of America, Richard B. Roper--U.S. Attorney, and Mary McKinney [Doc. #35] are quashed.

SO ORDERED.

DATED: June 7, 2006.

/s/ Jeff Kaplan
JEFF KAPLAN
UNITED STATES MAGISTRATE JUDGE

USCA5 336

2006 Jun 14—ECS order, no signature of Record

Docket Entry [38] purports to be signed, but there is no such signature of Record. *See* USCA5 349-54.

2006 Jun 20—ECS order, no signature of Record

Docket Entry [39] purports to be signed, but there is no such signature of Record. *See* USCA5 355-58.

Rule 14.1(i)(iii)—Rehearing

No rehearing sought or granted.

Rule 14.1(i)(iv)—Judgment of different date

No judgment of date different from the opinion.

Rule 14.1(i)(v)—Statutes and Rules

None

Rule 14.1(i)(vi)—Additional Essential Materials

Reference to the Record will suffice.